

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 22, 2022**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ALAN D. ROBERTSON,

Plaintiff,

v.

LORNE A. DORN; and KIM DORN,

Defendants.

No. 2:21-CV-00064-SAB

**ORDER GRANTING  
STIPULATED MOTION FOR  
PROTECTIVE ORDER**

Before the Court is the parties' Stipulated Protective Order Re: Nonparty Providence Sacred Heart Medical Center, ECF No. 136. Plaintiff is represented by David Beninger; Mark Kamitomo; Patricia Anderson; and George Ahrend. Defendants are represented by Patricia Buchanan; Megan Starks; and Sara Sutton. Providence Sacred Heart Medical Center is represented by Andrew Wagley and Stephen Lamberson.

Pursuant to the Court's previous Order, ECF No. 132, the parties have submitted their stipulated proposed protective order for the information sought from Providence Sacred Heart Medical Center. The Court finds good cause to grant the motion.

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**ORDER GRANTING STIPULATED MOTION FOR PROTECTIVE  
ORDER # 1**

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. The parties' Stipulated Protective Order Re: Nonparty Providence  
3 Sacred Heart Medical Center, ECF No. 136, is **GRANTED**.

4 2. The Court enters the following into the record:

5 **Stipulated Protective Order**

6 1. PURPOSES AND LIMITATIONS

7 After the Court in the above-entitled case denied protection from discovery  
8 but granted a protective order on dissemination based on allegations that certain  
9 information sought from Nonparty Providence Sacred Heart Medical Center  
10 ("Nonparty PSHMC") through the Amended Subpoena served on or about January  
11 28, 2022 and March 9, 2022 may include protected confidential commercial  
12 information. As a result of that Order, Plaintiff, Defendants, and Nonparty PSHMC  
13 hereby submit to and petition the Court to enter the following Stipulated Protective  
14 Order in the form adopted in this Circuit. The parties acknowledge that this  
15 agreement is consistent with the order in this case and LCR 26(c). It does not  
16 confer blanket protection on all disclosures or responses to discovery, the  
17 protection it affords from public disclosure and use extends only to the limited  
18 information or items that the Court determined are entitled to confidential  
19 treatment under the applicable legal principles, and it does not presumptively  
20 entitle parties to file confidential information under seal.

21 2. "CONFIDENTIAL" MATERIAL

22 "Confidential" material shall include certain information, documents, and  
23 testimony designated as such in accordance with the Court's Order and obtained  
24 from Nonparty PSHMC.

25 3. SCOPE

26 The protections conferred by this agreement cover not only confidential  
27 material (as defined above), but also (1) any information copied or extracted from  
28 confidential material; (2) all copies, excerpts, summaries, or compilations of

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1 confidential material; and (3) any testimony, conversations, or presentations by  
2 parties or their counsel that might reveal confidential material.

3 However, the protections conferred by this agreement do not cover  
4 information that is in the public domain or becomes part of the public domain  
5 through trial or otherwise.

6 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

7 4.1 Basic Principles. A receiving party may use confidential material that  
8 is disclosed or produced by another party or by a non-party in connection with this  
9 case only for prosecuting, defending, or attempting to settle this litigation.

10 Confidential material may be disclosed only to the categories of persons and under  
11 the conditions described in this agreement. Confidential material must be stored  
12 and maintained by a receiving party at a location and in a secure manner that  
13 ensures that access is limited to the persons authorized under this agreement.

14 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
15 otherwise ordered by the court or permitted in writing by the designating party, a  
16 receiving party may disclose any confidential material only to:

17 (a) the receiving party’s counsel of record in this action, as well as  
18 employees of counsel to whom it is reasonably necessary to disclose the  
19 information for this litigation;

20 (b) the officers, directors, and employees (including in house  
21 counsel) of the receiving party to whom disclosure is reasonably necessary  
22 for this litigation, unless the parties agree that a particular document or  
23 material produced is for Attorney’s Eyes Only and is so designated;

24 (c) experts and consultants to whom disclosure is reasonably  
25 necessary for this litigation and who have signed the “Acknowledgment and  
26 Agreement to Be Bound” (Exhibit A);

27 (d) the court, court personnel, and court reporters and their staff;

28 (e) copy or imaging services retained by counsel to assist in the

1 duplication of confidential material, provided that counsel for the party  
2 retaining the copy or imaging service instructs the service not to disclose any  
3 confidential material to third parties and to immediately return all originals  
4 and copies of any confidential material;

5 (f) during their depositions, witnesses in the action to whom  
6 disclosure is reasonably necessary and who acknowledged they will treat  
7 Confidential material as confidential consistent with this Protective Order,  
8 and subsequently sign the “Acknowledgment and Agreement to Be Bound”  
9 (Exhibit A), unless otherwise agreed by the designating party or ordered by  
10 the court. Pages of transcribed deposition testimony or exhibits to  
11 depositions that reveal confidential material must be separately bound by the  
12 court reporter and may not be disclosed to anyone except as permitted under  
13 this agreement;

14 (g) the author or recipient of a document containing the  
15 information or a custodian or other person who otherwise possessed the  
16 information.

17 4.3 Filing Confidential Material. Before filing confidential material or  
18 discussing or referencing such material in court filings, the filing party shall confer  
19 with the designating party to determine whether the designating party will remove  
20 the confidential designation, whether the document can be redacted, or whether a  
21 motion to seal or stipulation and proposed order is warranted. During the meet and  
22 confer process, the designating party must identify the basis for sealing the specific  
23 confidential information at issue, and the filing party shall include this basis in its  
24 motion to seal, along with any objection to sealing the information at issue. A party  
25 who seeks to maintain the confidentiality of its information must satisfy the  
26 requirements of the applicable law even if it is not the party filing the motion to  
27 seal. Failure to satisfy this requirement will result in the motion to seal being  
28 denied, in accordance with the presumption of public access to the Court’s files.

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1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each party or non-party that designates information or items for protection  
4 under this agreement must take care to limit any such designation to specific  
5 material that qualifies under the appropriate standards. The designating party must  
6 designate for protection only those parts of material, documents, items, or oral or  
7 written communications that qualify, so that other portions of the material,  
8 documents, items, or communications for which protection is not warranted are not  
9 swept unjustifiably within the ambit of this agreement.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations  
11 that are shown to be clearly unjustified or that have been made for an improper  
12 purpose (e.g., to unnecessarily encumber or delay the case development process or  
13 to impose unnecessary expenses and burdens on other parties) expose the  
14 designating party to sanctions.

15 If it comes to a designating party's attention that information or items that it  
16 designated for protection do not qualify for protection, the designating party must  
17 promptly notify all other parties that it is withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in  
19 this agreement (*see, e.g.*, second paragraph of section 5.2(a) below), or as  
20 otherwise stipulated or ordered, disclosure or discovery material that qualifies for  
21 protection under this agreement must be clearly so designated before or when the  
22 material is disclosed or produced.

23 (a) Information in documentary form: (*e.g.*, paper or electronic  
24 documents and deposition exhibits, but excluding transcripts of depositions  
25 or other pretrial or trial proceedings), the designating party must affix the  
26 word "CONFIDENTIAL" to each page that contains confidential material. If  
27 only a portion or portions of the material on a page qualifies for protection,  
28 the producing party also must clearly identify the protected portion(s) (*e.g.*,

1 by making appropriate markings in the margins).

2 (b) Testimony given in deposition or in other pretrial proceedings:  
 3 the parties and any participating non-parties must identify on the record,  
 4 during the deposition or other pretrial proceeding, all protected testimony,  
 5 without prejudice to their right to so designate other testimony after  
 6 reviewing the transcript. Any party or non-party may, within fifteen days  
 7 after receiving the transcript of the deposition or other pretrial proceeding,  
 8 designate portions of the transcript, or exhibits thereto, as confidential. If a  
 9 party or non-party desires to protect confidential information at trial, the  
 10 issue should be addressed during the pre-trial conference.

11 (c) Other tangible items: the producing party must affix in a  
 12 prominent place on the exterior of the container or containers in which the  
 13 information or item is stored the word "CONFIDENTIAL." If only a portion  
 14 or portions of the information or item warrant protection, the producing  
 15 party, to the extent practicable, shall identify the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
 17 failure to designate qualified information or items does not, standing alone, waive  
 18 the designating party's right to secure protection under this agreement for such  
 19 material. Upon timely correction of a designation, the receiving party must make  
 20 reasonable efforts to ensure that the material is treated in accordance with the  
 21 provisions of this agreement.

## 22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any party or non-party may challenge a  
 24 designation of confidentiality at any time. Unless a prompt challenge to a  
 25 designating party's confidentiality designation is necessary to avoid foreseeable,  
 26 substantial unfairness, unnecessary economic burdens, or a significant disruption  
 27 or delay of the litigation, a party does not waive its right to challenge a  
 28 confidentiality designation by electing not to mount a challenge promptly after the

1 original designation is disclosed.

2       6.2 Meet and Confer. The parties must make every attempt to resolve any  
3 dispute regarding confidential designations without court involvement. Any motion  
4 regarding confidential designations or for a protective order must include a  
5 certification, in the motion or in a declaration or affidavit, that the movant has  
6 engaged in a good faith meet and confer conference with other affected parties in  
7 an effort to resolve the dispute without court action. The certification must list the  
8 date, manner, and participants to the conference. A good faith effort to confer  
9 requires a face-to-face meeting or a telephone conference.

10       6.3 Judicial Intervention. If the parties cannot resolve a challenge without  
11 court intervention, the designating party may file and serve a motion to retain  
12 confidentiality pursuant to the applicable law. The burden of persuasion in any  
13 such motion shall be on the designating party. Frivolous challenges, and those  
14 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and  
15 burdens on other parties) may expose the challenging party to sanctions. All parties  
16 shall continue to maintain the material in question as confidential until the court  
17 rules on the challenge.

18 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
19 IN OTHER LITIGATION

20       If a party is served with a subpoena or a court order issued in other litigation  
21 that compels disclosure of any information or items designated in this action as  
22 “CONFIDENTIAL,” that party must:

23               (a) promptly notify the designating party in writing and include a  
24 copy of the subpoena or court order;

25               (b) promptly notify in writing the party who caused the subpoena  
26 or order to issue in the other litigation that some or all of the material  
27 covered by the subpoena or order is subject to this agreement. Such  
28 notification shall include a copy of this agreement; and

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(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of the file, even if such materials contain confidential material.



1 The confidentiality obligations imposed by this agreement shall remain in  
2 effect until a designating party agrees otherwise in writing or a court orders  
3 otherwise.

4 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
5 Order and provide copies to counsel.

6 **DATED** this 22nd day of March 2022.



10 A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

11 Stanley A. Bastian  
12 Chief United States District Judge  
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